

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.4398 OF 1984

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

- 
1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

-----

M.C.MANKAR, SINCE DECD. HIS HEIRS & L/Rs.  
VERSUS  
THE STATE OF GUJARAT & ANR.

-----

Appearance:

MR MD RANA for Petitioner  
MR HL JANI for Respondent No.1  
MR DT SONI for Respondent No.2

-----

Coram: S.K. Keshote,J  
Date of decision: 24/12/1997

C.A.V. JUDGMENT

1. The petitioner, since deceased, now represented

by his heirs and legal representatives, filed this Special Civil Application and prayer has been made for quashing and setting aside the impugned action of the respondents not allowing him to have his name as qualified Compounder in the Registration of the Gujarat Pharmacy Council Act, 1948, and that the action of respondent No.1 not giving the benefit of the Circular and Resolutions, annexures 'C' & 'D', be declared void and unconstitutional. Further prayer has been made for giving direction to the respondents to give him pay prescribed for the qualified Compounders.

2. The petitioner, since deceased, was appointed as a Compounder in the Government Services on 27th March 1963. In the Desai Pay Commission, which has been given effect from 1.1.73, two different pay scales have been prescribed with reference to the qualifications to be given to the Compounders, namely Rs.260-400 for the unqualified Compounders and Rs.330-560 for qualified Compounders. The fourth Pay Commission has maintained the said distinction. The petitioner's pay was fixed with effect from 1.1.73 in the revised pay scale prescribed for unqualified Compounders and he has never made any grievance against that prescription of his pay. The petitioner filed this Special Civil Application in the year 1984 and even if we go by the fact that the revised pay scale Rules were framed in the year 1975 then too the delay in filing this Special Civil Application with the prayer for his entitlement for the pay scale prescribed for qualified Compounders is of more than nine years. The petitioner has failed to give any satisfactory explanation for this delay.

3. The learned counsel for the petitioner made twofold contentions in this case. First, it is contended that the post of Compounders was redesignated as Junior Pharmacist and the unqualified Compounders were asked to undergo training according to the seniority so that the successful completion of training may be followed by their registration as Pharmacist and they may be taken as Junior Pharmacist (qualified Compounders) but the petitioner was not sent for training and as such he was deprived of becoming a Junior Pharmacist (qualified Compounder). It has next been contended that the petitioner has also applied for his registration as Pharmacist under the provisions of the Gujarat Pharmacy Council Act, 1948, but that registration has also been illegally denied to him. The learned counsel for the respondents contended that the petitioner has no case whatsoever on merits.

4. I have given my thoughtful considerations to both the submissions made by learned counsel for the petitioner.

5. On the record of this Special Civil Application, the petitioner has not produced the seniority list of unqualified Compounders. Not only this, it is not the case of petitioner that the persons who were junior to him have been sent for training in pursuance to the Government Resolution, as filed by petitioner on record of this Special Civil Application at annexure 'D' dated 3rd August 1981. In the absence of seniority list of unqualified Compounders as well as further specific pleadings that the persons junior to him have been sent for training, this contention of learned counsel for the petitioner deserves no acceptance. Otherwise also, in case this grievance would have been there and the petitioner would have felt aggrieved of the same then he should have come before this Court at the appropriate time. The petitioner has not come before this Court at the appropriate time and now making this grievance after so many years cannot be accepted. So the first contention of the learned counsel for the petitioner deserves to be rejected on the two grounds that necessary factual foundation for the same has not been given and secondly that this grievance is made by petitioner after considerable delay.

6. So far as the second grievance is concerned, the petitioner has not produced on record of this Special Civil Application, the necessary documents showing when he applied for his registration to the Pharmacy Council. The learned counsel for the petitioner fairly conceded that as per Section 31 of the Gujarat Pharmacy Act, 1948, (hereinafter referred to as the 'Act'), the petitioner falls under clause 'd' thereof. The relevant portion of Section 31 of the Act reads as under:

A person who has attained the age of eighteen years shall be entitled on payment of the prescribed fee to have his name entered in the first register if he resides, or carried on the business or profession of pharmacy, in the State and if he:

(d) has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioners for a total period of not less than five years prior to the date

notified under sub-section (2) of S.30.

The learned counsel for the petitioner contended that the petitioner was having experience of engaging himself in the compounding of drugs in hospital or dispensary or other places in which drugs are regularly dispensed on prescriptions of medical practitioners for a total period of not less than five years prior to the date notified under sub-section (2) of Section 30. Sub-section (2) of Section 30 of the Act provide that the State Government shall, by the same or a like notification, appoint a date on or before which applications for registration, which shall be accompanied by the prescribed fee, shall be made to the Registration Tribunal. It has been brought on record of this Special Civil Application that the last date for receipt of application for registration under Section 31 read with Section 30 of the Act was 31st March 1966, and the petitioner has not applied in time. As stated earlier, the learned counsel for the petitioner has failed to show, by way of any documents or any evidence on record of this Special Civil Application that the petitioner had made application for his registration under the Act before 31st March 1966. From the document annexure 'F' on record, i.e. a letter of the Gujarat State Pharmacy Council, addressed to the petitioner, I find that the petitioner, vide his letter dated 8.5.78, has applied to the Pharmacy Council to give him registration as Pharmacist on the basis of compounding experience. His application has been replied by Pharmacy Council under the aforesaid letter interalia stating that the registration for Pharmacist on the basis of experience of compounding has been closed after 31.3.66 and as such there is no question of his registration. In view of this fact, I do not find any illegality in the action of respondent, the Pharmacy Council not to register the petitioner as Pharmacist under the Act aforesaid. The registration of Pharmacist on the basis of experience as provided in clause (d) of Section 31 of the Act was one time programme and in case the petitioner has not availed of that opportunity within time as stipulated, then he has to blame himself. The action of respondent, Pharmacy Council not to give registration to the petitioner as Pharmacist under the Act is not illegal or arbitrary which calls for interference of this Court. The petitioner at no point of time, has made any effort to get himself registered by availing the opportunity given to him by the pharmacy Council under the provisions of Section 31 read with Section 30 of the said Act. It is a case where the petitioner made an attempt thereafter to get the pay scale prescribed for qualified Compounders when he missed that opportunity long back.

7. Taking into consideration the totality of the facts of this case, I do not find any substance in this Special Civil Application and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

.....

(sunil)